IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2005

C O R A M :

THE HONOURABLE MR.JUSTICE P.SATHASIVAM
AND
THE HONOURABLE MR.JUSTICE S.K.KRISHNAN

W.P.NO.36148 OF 2002

A.Barnabas ... Petitioner

-vs-

1. Union of India, rep.by the
   Vice Chairman,
   Ministry of Youth Affairs and
   Sports, Sports Authority of
   India, Jawaharlal Nehru Stadium,
   New Delhi - 110 003.

2. The Director General,
   Sports Authority of India,
   Jawaharlal Nehru Stadium,
   Lodhi Road Complex,
   New Delhi - 110 003.

3. Central Administrative Tribunal,
   Madras Bench, rep.by its
   Registrar, City Civil Court
   Buildings, Chennai-600 104. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the Central Administrative Tribunal, Madras in O.A.No.631 of 2000 and quash its order, dated 18.9.2001 relating to the 2nd respondent's order, dated 10.3.1999 No.12(325) 96-Vig.Cell and direct the respondents to reinstate the petitioner in service with consequential benefits.

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For petitioner : Mr.P.V.Bakthavathchalam

For respondents : Mr.J.Venugopal for R1
Mr.L.Chandrakumar for R2

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O R D E R

(ORDER OF THE COURT WAS MADE BY P.SATHASIVAM, J.)

Aggrieved by the order of the Central Administrative Tribunal, dated 18.9.2001 made in O.A.No.631 of 2000 and the order of the second respondent, viz., the Director General, Sports Authority of India, New Delhi, dated 10.3.1999 as well as the order of the first respondent, viz., the Vice Chairman, Ministry of Youth Affairs and Sports, Sports Authority of India, New Delhi, dated 19.5.2000, the petitioner has filed the above writ petition to quash those orders and direct respondents 1 and 2 to reinstate him in service with consequential benefits.

2. The case of the petitioner is briefly stated hereunder:-

According to him, he was appointed as Assistant Director in the Sports Authority of India and posted at New Delhi on 30.3.1990. Thereafter, he was transferred to Bangalore on 24.4.1990 and from Bangalore to Salem on 28.8.1991, then re-transferred to Bangalore on 16.1.1996 and thereafter to Imphal on 14.5.1997. While at Imphal, the second respondent issued a charge memo on 16.5.1997 under Rule 14 of the C.C.S.(CCA) Rules, 1965 and called for the explanation. The petitioner submitted his explanation on 05.11.1997. An enquiry officer was appointed to go into the four charges levelled against him. The enquiry officer fixed the date for regular enquiry on 14.3.1998. Since the petitioner was not well, he did not attend the enquiry on 14.3.1998. The enquiry officer held the enquiry in his absence and submitted his report holding that Charge Nos. 1, 3 and 4 were proved. On his request, the disciplinary authority remitted the matter back to the enquiry officer by order, dated 25.8.1998. In the said order, direction was also issued to give an opportunity to the petitioner to cross-examine the witnesses produced by the presenting officer and he may also be allowed to produce his defence witnesses. In spite of the said order, the enquiry officer simply adopted and endorsed his earlier report without examining witnesses and without calling upon the petitioner to enter his defence. When he appeared for the de novo enquiry, he prayed for an adjournment. The enquiry officer denied his request and submitted his supplementary report on 06.10.1998 simply adopting the earlier report. Questioning the same, the petitioner filed an appeal on 05.4.1999 before the first respondent. Ultimately, by order, dated 19.5.2000, the appellate authority dismissed his appeal confirming the order of the disciplinary authority. Thereafter, the petitioner approached the Central Administrative Tribunal by filing an application in O.A.No.631 of 2000. The Tribunal, by the impugned order, confirmed the orders

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passed by the original and appellate authority and dismissed his Original Application. Hence, the present writ petition.

3. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for respondents 1 and 2.

4. After taking us through the relevant materials, the learned counsel for the petitioner vehemently contended that after the remittal order, dated 25.8.1998, the enquiry officer ought to have afforded adequate opportunity to him to cross-examine the witnesses and to put forth his defence. In the absence of such an opportunity, according to him, the ultimate conclusion of the enquiry officer finding that Charge No.1 is proved and the consequential order of the disciplinary as well as the appellate authority including the order of the Tribunal are liable to be set aside. On the other hand, the learned counsel appearing for the second respondent would submit that inasmuch as adequate opportunity was afforded to the petitioner and having failed to utilise the same, it would not be open to the petitioner to raise such contention at this stage, when his grievance was duly considered by all the authorities. We have carefully considered the rival submissions and perused the relevant materials.

5. In the light of the order to be passed hereunder, we are of the view that it is unnecessary to traverse all the factual details as stated by the petitioner as well as the second respondent. It is relevant to note that at the request of the petitioner, the disciplinary authority, in order to give an opportunity to him, remitted the matter back to the enquiry officer by the order, dated 25.8.1998. The perusal of the said order makes it clear that in order to meet the ends of natural justice and to give an opportunity to the petitioner to cross-examine the witnesses produced by the presenting officer, the matter was remitted to the enquiry officer. The fact remains that though it is stated that he was late by 45 minutes, he did not utilise the opportunity which was given by the disciplinary authority. The perusal of the enquiry officer's supplementary report, dated 06.10.1998 amply shows that in order to provide an opportunity to cross-examine, the government witnesses and other concerned people were invited for third time to attend the proceedings. It further shows that though all the witnesses were present, they were not cross-examined by the Charged Officer, viz., the petitioner. On going through the relevant factual details from the report of the enquiry officer, we are unable to accept the stand taken by the petitioner. Further, the disciplinary authority, while considering the claim of the petitioner, has concluded that "Shri Barnabass has deliberately avoided to have the inquiry completed expeditiously and in spite

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of an extended enquiry second time, has based his defence on technicalities rather than merit. Article 1 of the charges relates to the fact that Shri Barnabass had collected Rs.1115/- from Shri M.Rajendran, Groundsman and Rs.985/- from Shri M.Athian, Safai Karamchari by calling it a fine against them in lieu of the leave availed of by them. The three witnesses, namely, Shri M.Rajendran, S.Bharati and P.Selvaraj have clearly stated that the fine as alleged to the extent of Rs.1115/- and Rs.985/- was collected by Shri A.Barnabass. Shri Barnabass has not been able to contradict their statement or create any doubt on the veracity of these witnesses. There is no reason to doubt the evidence of these witnesses. Therefore, this charge stands proved." After arriving at such a conclusion, the disciplinary authority has stated that the said Barnabass (writ petitioner) is not a fit person to be retained any further in service and ordered compulsory retirement from the service of Sports Authority of India. It is also relevant to note that against the said order, the petitioner preferred an appeal to the first respondent - Sports Authority of India. The order, dated 19.5.2000 of the appellate authority shows that after considering the Charge Memorandum, report of the enquiry officer and the order of the original authority, the appellate authority has concluded that the punishment imposed on the officer is reasonable and acceptable and rejected his appeal.

6. Coming to the order of the Tribunal, though the Tribunal has proceeded to consider the case of the petitioner based on the original report of the enquiry officer, a reading of the entire order of the Tribunal shows that in spite of the opportunity afforded to the petitioner, he did not avail the same to cross-examine the witnesses. In other words, we are of the view that the Tribunal was conscious of all the factual details including the remand order by the disciplinary authority and failure on the part of the petitioner to utilise the same to cross-examine the witnesses produced on the side of the presenting officer. In such circumstances, the order of the Tribunal cannot be faulted with.

7. Though the learned counsel appearing for the petitioner made a further request for remitting the matter to the enquiry officer in order to cross-examine the witnesses produced on the side of the department, in the light of the above discussion and in view of the categorical findings by the authorities concerned, we are not inclined to accede to the request of the petitioner. We are satisfied that the petitioner was given adequate opportunities and in fact it was he who failed to utilise the same. Except the above said argument, no other contention was raised.

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8. In the light of what is stated above, we are in agreement with the conclusion arrived by the respondents and we do not find any merit in the writ petition. Consequently the same is dismissed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Vice Chairman,
   Union of India,
   Ministry of Youth Affairs and
   Sports, Sports Authority of
   India, Jawaharlal Nehru Stadium,
   New Delhi - 110 003.

2. The Director General,
   Sports Authority of India,
   Jawaharlal Nehru Stadium,
   Lodhi Road Complex,
   New Delhi - 110 003.

3. The Registrar,
   Central Administrative Tribunal,
   Madras Bench,
   City Civil Court
   Buildings, Chennai-600 104.

+ 1 cc to Mr.P.V.Bakthavatchalam, Advocate SR No.44061

+ 1 cc to Mr.L.Chandrakumar, Advocate SR No.44064

+ 1 cc to Mr.J.Venugopal, Advocate SR no.44052

SGL(CO)
SR/10.11.2005

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